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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 274

CLARK'S FERRY BRIDGE COMPANY, APPELLANT,

vs.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA.

APPEAL FROM THE SUPERIOR COURT OF PENNSYLVANIA.

JURISDICTIONAL STATEMENT OF THE APPELLANT.

Clark's Ferry Bridge Company, appellant, the applicant for appeal herein to the Supreme Court of the United States from the judgment of the Superior Court of Pennsylvania, dated and filed on March 17, 1933, and made final by the refusal of the Supreme Court of Pennsylvania on April 11, 1933, to allow an appeal therefrom to that court, in accordance with the requirements of Rule 12, paragraph 1, of the Rules of the Supreme Court of the United States, herewith presents this separate typewritten statement as to the jurisdiction of the Supreme Court of the United States.

I.

Basis Upon Which it is Contended that the Supreme Court of the United States Has Jurisdiction Upon Appeal to Review the Judgment in Question.

The judgment of the Superior Court of Pennsylvania, dated and filed on March 17, 1933, made final by the refusal of the Supreme Court of Pennsylvania on April 11, 1933, to allow an appeal therefrom to that court, is a final judgment in a suit in the highest court of the State of Pennsylvania in which a decision in the suit could be had, where is drawn in question the validity of a statute of the State of Pennsylvania, on the ground of its being repugnant to the Constitution of the United States, and the decision is in favor of its validity.

Stratton v. *Stratton*, 239 U. S. 55.

Second National Bank v. *First National Bank*, 242 U. S. 600.

Cuyahoga River Power Co. v. *Northern Realty Co.*, 244 U. S. 300.

Pennsylvania Railroad Co. v. *Public Service Commission*, 250 U. S. 566.

Randall v. *Board of Commissioners*, 261 U. S. 252.

Act of July 26, 1913, P. L. 1374, Art. VI, Sec. 30, 66 Purdon's Penna. Statutes Annotated, Title 66, Sec. 681.

Commonwealth v. *Gardner*, 297 Pa. 498, 500.

II.

Statutory Provision Believed to Sustain the Jurisdiction.

The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States upon appeal to review the judgment in question is Section 237 (*a*) of the

Judicial Code of the United States, as last amended by the Act of February 13, 1925, c. 229, Sec. 1, 43 Stat. 937, 28 U. S. C. A. 344, as in effect prior to and at the enactment of the Act of January 31, 1928, c. 14, 45 Stat. 54, 28 U. S. C. A. 861*a*, and of the amendatory Act of April 26, 1928, c. 440, 45 Stat. 466, 28 U. S. C. A. 466, and as amended by said two last mentioned acts.

III.

The Statute of the Commonwealth of Pennsylvania the Validity of Which is Involved.

The statute of the Commonwealth of Pennsylvania, the validity of which is involved, is the order of The Public Service Commission of the Commonwealth of Pennsylvania, made February 2, 1932, in a proceeding instituted by said commission on its own motion, before itself, to inquire into and determine the reasonableness of the rates charged by the appellant to the public for the use of its toll bridge property. Said order was as follows:

> "Now, to wit, February 2, 1932, it is ordered: That Clark's Ferry Bridge Company file, post and publish, effective thirty (30) days from date hereof, upon not less than one (1) day's notice to the public and this commission, a new tariff calculated to produce an annual gross revenue of not more than $84,125.
>
> "It is further ordered: That said tariff contain as tentative rates intended to produce said gross annual revenue of $84,125, and effective until further action by this commission or the company in conformity with said determination of allowable gross revenue, the following charges:
>
> "(1) A rate of 8 cents cash toll for all ordinary passenger automobiles and wagons now paying 10 cents.
>
> "(2) A ticket without time limit salable at the rate of two for 15 cents for all such automobiles and wagons.

"(3) A 20-trip ticket non-transferable as between vehicles, good any time within thirty (30) days from date of issue and salable for one dollar ($1) for all such automobiles and wagons.

"(4) Rates for all other types of vehicles as are now provided in Tariff P. S. C. Pa. No. 5.

"It is further ordered: That said company file with this commission monthly statements of income and operating expenses, showing the number of vehicles passing over its bridge in each class of traffic as contained in its tariff.

[SEAL.] THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA.

(Signed) S. RAY SHELBY,
Acting Chairman.

Attest:
LOUIS TEVELL,
Secretary."

The said order was made by virtue of the power conferred by the Legislature of Pennsylvania upon the Public Service Commission of the Commonwealth of Pennsylvania by the provisions of the Public Service Company Law, which is the Act of July 26, 1913, P. L. 1374, Purdon's Penna. Statutes Annotated, Title 66; and particularly by Article V, Section 1 and Article VI, Section 8, thereof, 66 Purdon's Penna. Statutes Annotated, Secs. 471 and 753.

The order of the Public Service Commission, made under legislative authority, fixing the rates which may be charged by the appellant for the use of its bridge property by the public, is a statute of the state, within the meaning of Section 237 (*a*) of the Judicial Code of the United States, as last amended by the Act of February 13, 1925. c. 229, Sec. 1, 43 Stat. 937.

Lake Erie & W. R. R. Co. v. *Pub. Util. Comm.*, 249 U. S. 422, 424.

Bluefield Co. v. *Pub. Serv. Comm.*, 262 U. S. 679, 683.

Northern Pacific v. *Dept. Public Works*, 268 U. S. 39, 42.
Live Oak Assn. v. *R. R. Comm.*, 269 U. S. 354, 356.
King Mfg. Co. v. *Augusta*, 277 U. S. 100, 102.
Sultan Ry. Co. v. *Dept. of Labor*, 277 U. S. 135, 136.

IV.

Date of the Judgment Sought to be Reviewed and of Application for Appeal.

The judgment of the Superior Court of Pennsylvania sought to be reviewed was dated and filed on March 17, 1933.

The petition of the appellant to the Supreme Court of Pennsylvania for the allowance of an appeal to that court was refused on April 11, 1933.

The application for appeal was presented on June 15, 1933.

V.

Nature of the Case and Rulings of the Court Which Bring the Case Within the Jurisdictional Provision Relied On.

Clark's Ferry Bridge Company, appellant, since 1915 has owned and operated a toll bridge across the Susquehanna river at Clark's Ferry in the State of Pennsylvania. Its rates of toll are subject to regulation by the Public Service Commission of the Commonwealth of Pennsylvania, a governmental commission created by, and exercising authority under, the Public Service Company Law of Pennsylvania (Act of July 26, 1913, P. L. 1374; Purdon's Penna. Statutes Annotated, Title 66).

On January 14, 1930, the commission, on its own motion, instituted before itself, an inquiry and investigation to determine the reasonableness of the appellant's rates.

After hearings it made its order dated February 2, 1932, which fixed the maximum annual gross revenue which the company might earn, at $84,125, and prescribed a tentative schedule of rates designed to produce revenue not in excess of that amount. The order is quoted in full above.

Under the provisions of the Public Service Company Law (Act of July 26, 1913, P. L. 1374, Art. VI, Sec. 17, 66 Purdon's Penna. Statutes Annotated, Sec. 811) an appeal from such order lies to the Superior Court of Pennsylvania, which is the judicial tribunal charged with determining, in the first instance, the reasonableness of the rates allowed (*Ohio Valley Co.* v. *Ben Avon Borough*, 253 U. S. 287, and *Ben Avon Borough* v. *Ohio Valley Water Co.*, 271 Pa. 346).

Such appeal was taken from this order to the Superior Court of Pennsylvania, and in its petition for appeal the appellant challenged the validity of the order as repugnant to the Constitution of the United States by the assignment of the following errors:

"*21st Assignment of Error:*

"The commission erred in fixing the valuation of your petitioners property used and useful in the public service, at $767,800, and the findings, determination and order of the commission are in this respect confiscatory and are in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, in that the necessary result of said findings, determination and order is to deprive your petitioner of its property without due process of law and to deny to your petitioner the equal protection of the laws."

"*22nd Assignment of Error:*

"The commission erred in restricting the allowable gross revenue of your petitioner to $84,125 per year, and its findings, determination and order are in this respect confiscatory and are in violation of the provisions of the Fourteenth Amendment to the Constitu-

tion of the United States, in that the necessary result of said findings, determination and order is to deprive your petitioner of its property without due process of law and to deny to your petitioner the equal protection of the laws."

On March 17, 1933, the Superior Court delivered and filed its opinion and entered its judgment. Without specific reference to the above quoted assignments of error it dismissed them, by the following ruling:

"For the reasons, thus stated at length, our independent judgment is that the order of the commission, allowing appellant a gross annual revenue of $84,124, is reasonable and in conformity with law, with the exception that the item of $1,331 for bond amortization should not have been excluded.

"The allowances should have been:

Fair return (7% upon $767,800)	$53,746
Operating expenses	22,700
Annual depreciation	7,678
Annual bond amortization	1,331
Total annual gross revenue	$85,455

"We are not convinced that the order appealed from required any other change or modification.

"It is, accordingly, modified by substituting an annual gross revenue of $85,455 instead of $84,125, and, as thus modified, is affirmed and the appeal dismissed."

On March 27, 1933, the appellant seasonably filed in the Supreme Court of Pennsylvania its petition for the allowance of an appeal to that court, and in said petition it stated, among the questions involved in the appeal, the following:

"(*c*) Is the finding of the commission and the judgment of the superior court fixing the value of the ap-

pellant's property at $767,800 confiscatory and in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States?"

"(*e*) Is the judgment of the superior court, fixing the allowable gross revenue of the appellant at $85,455, confiscatory and in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States?"

The ruling of the Supreme Court of Pennsylvania on the petition for appeal was as follows:

"1933, April 11.—Appeal refused. Per Curiam. S."

The questions thus raised by the appellant at the first opportunity and occasion for so doing, and insisted upon to the court of last resort in the State, are questions arising under the Constitution of the United States.

Smyth v. *Ames*, 169 U. S. 466, 526.
Minnesota Rate Cases, 230 U. S. 352, 434.
Bluefield Waterworks Co. v. *Public Service Commission*, 262 U. S. 679, 690.

It is, therefore, respectfully submitted that this Court has jurisdiction of this appeal by virtue of Section 237 (*a*) of the Judicial Code, 28 U. S. C. A. 344 (*a*), as amended.

Respectfully submitted,

GEO. ROSS HULL,
Counsel for Appellant.